

# HOUSE BILL No. 1815

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5; IC 6-8.1-16; IC 6-9.

**Synopsis:** Streamlined sales tax. Adds or amends various sales tax definitions and exemptions in order to conform to the streamlined sales and use tax agreement. Establishes sourcing rules for determining the taxing situs of telecommunications services (other than mobile telecommunications services otherwise covered by current law). Amends references to carryout food in the food and beverage tax statutes to conform to the new sales tax definitions. Authorizes the department of state revenue to adopt emergency rules to implement this bill.

**Effective:** Upon passage; January 1, 2004.

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## Crawford, Welch, Espich

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January 23, 2003, read first time and referred to Committee on Ways and Means.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1815

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-2.5-1-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 5. (a) **Except as**  
3 **provided in subsection (b), "gross retail income" means the total gross**  
4 **receipts, of any kind or character, received in a retail transaction,**  
5 **except including cash, credit, property, and services, for which**  
6 **tangible personal property is sold, leased, or rented, valued in**  
7 **money, whether received in money or otherwise, without any**  
8 **deduction for:**  
9 (1) **the seller's cost of the property sold;**  
10 (2) **the cost of materials used, labor or service cost, interest,**  
11 **losses, all costs of transportation to the seller, all taxes**  
12 **imposed on the seller, and any other expense of the seller;**  
13 (3) **charges by the seller for any services necessary to**  
14 **complete the sale, other than delivery and installation**  
15 **charges;**  
16 (4) **delivery charges;**  
17 (5) **installation charges; or**



(6) the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(b) "Gross retail income" does not include that part of the gross receipts attributable to:

(1) the value of any tangible personal property received in a like kind exchange in the retail transaction, **if the value of the property given in exchange is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or**

(2) the receipts received in a retail transaction which constitute interest, finance charges, or insurance premiums on either a promissory note or an installment sales contract; ~~(b)~~

**(3) discounts, including cash, terms, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;**

**(4) interest, financing, and carrying charges from credit extended on the sale of personal property if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; or**

**(5) any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.**

(c) A public utility's or a power subsidiary's gross retail income includes all gross retail income received by the public utility or power subsidiary, including any minimum charge, flat charge, membership fee, or any other form of charge or billing.

SECTION 2. IC 6-2.5-1-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 11. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume.**

SECTION 3. IC 6-2.5-1-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 12. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. The term does not include any preparation:**

**(1) containing flour; or**

**(2) requiring refrigeration.**

SECTION 4. IC 6-2.5-1-13 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 13. "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.**

SECTION 5. IC 6-2.5-1-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 14. "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.**

SECTION 6. IC 6-2.5-1-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 15. "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.**

SECTION 7. IC 6-2.5-1-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 16. "Dietary supplement" means any product, other than tobacco, that:**

- (1) is intended to supplement the diet;
- (2) contains one (1) or more of the following dietary ingredients:
  - (A) a vitamin;
  - (B) a mineral;
  - (C) an herb or other botanical;
  - (D) an amino acid;
  - (E) a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or
  - (F) a concentrate, a metabolite, a constituent, an extract, or a combination of any ingredient described in this subdivision;
- (3) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or, if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and
- (4) is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required under 21 CFR 101.36.

SECTION 8. IC 6-2.5-1-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 17. "Drug" means a compound, substance, or preparation and any component of a compound, substance, or preparation that is:**

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- (1) recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them;
- (2) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or
- (3) intended to affect the structure or any function of the body.

The term does not include food and food ingredients, dietary supplements, or alcoholic beverages.

SECTION 9. IC 6-2.5-1-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 18. "Durable medical equipment" means equipment, including repair and replacement parts for the equipment, that:

- (1) can withstand repeated use;
- (2) is primarily and customarily used to serve a medical purpose;
- (3) generally is not useful to a person in the absence of illness or injury; and
- (4) is not worn in or on the body.

The term does not include mobility enhancing equipment.

SECTION 10. IC 6-2.5-1-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

SECTION 11. IC 6-2.5-1-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 20. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and that are consumed for their taste or nutritional value. The term does not include alcoholic beverages, candy, dietary supplements, or soft drinks.

SECTION 12. IC 6-2.5-1-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 21. (a) "Lease" or "rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend. "Lease" or "rental" does not include:

- (1) a transfer of possession or control of property under a

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security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(2) a transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the total required payments; or

(3) providing tangible personal property along with an operator for a fixed or indeterminate period, if:

(A) the operator is necessary for the equipment to perform as designed; and

(B) the operator does more than maintain, inspect, or set up the tangible personal property.

(b) "Lease" or "rental" includes agreements covering motor vehicles and trailers in which the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. 7701(h)(1).

(c) The definition of "lease" or "rental" set forth in this section applies throughout this article, regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code (IC 26-1), or other provisions of federal, state, or local law.

(d) This section applies only to leases or rentals entered into after June 30, 2003, and has no retroactive effect on leases or rentals entered into before July 1, 2003.

SECTION 13. IC 6-2.5-1-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 22. "Mobility enhancing equipment" means equipment, including repair and replacement parts for the equipment, that:

(1) is primarily and customarily used to provide or increase the ability to move from one (1) place to another and is appropriate for use either in a home or a motor vehicle;

(2) is not generally used by persons with normal mobility; and

(3) does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

The term does not include durable medical equipment.

SECTION 14. IC 6-2.5-1-23 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 23. "Prescription" means an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law.**

SECTION 15. IC 6-2.5-1-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 24. Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:**

(1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.

(2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.

(3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.

(4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

SECTION 16. IC 6-2.5-1-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 25. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:**

(1) artificially replace a missing part of the body;

(2) prevent or correct physical deformity or malfunction; or

(3) support a weak or deformed part of the body.

SECTION 17. IC 6-2.5-1-26 IS ADDED TO THE INDIANA CODE

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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 26. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. The term does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.**

SECTION 18. IC 6-2.5-1-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: **Sec. 27. "Tangible personal property" means personal property that:**

- (1) can be seen, weighed, measured, felt, or touched; or**
- (2) is in any other manner perceptible to the senses.**

**The term includes electricity, water, gas, steam, and prewritten computer software.**

SECTION 19. IC 6-2.5-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 1. (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if he is making a wholesale sale as described in section 2 of this chapter.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

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For purposes of subdivision (2), charges for delivery are charges by the seller for preparation and delivery of the property to a location designated by the purchaser of property, including but not limited to transportation, shipping, postage, handling, crating, and packing.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of gasoline (as defined in IC 6-6-1.1-103) and special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the gasoline or special fuel minus the part of that price attributable to tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food ~~or beverages and food ingredients~~ furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food ~~or beverages and food ingredients~~ when the purchaser pays the charges.

SECTION 20. IC 6-2.5-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person **other than for subrent or sublease.**

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

(1) the person who pays to rent or lease the film charges admission to those who view the film; or

(2) the person who pays to rent or lease the film or tape broadcasts the film or tape for home viewing or listening.

SECTION 21. IC 6-2.5-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 1. Transactions



involving animals, feed, seed, plants, fertilizer, insecticides, fungicides, and other tangible personal property are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for his direct use in the direct production of food **and food ingredients** or commodities for sale or for further use in the production of food **and food ingredients** or commodities for sale; and

(2) the person acquiring the property is occupationally engaged in the production of food **and food ingredients** or commodities which he sells for human or animal consumption or uses for further food **and food ingredient** or commodity production.

SECTION 22. IC 6-2.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 2. (a) Transactions involving agricultural machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for his direct use in the direct production, extraction, harvesting, or processing of agricultural commodities.

(b) Transactions involving agricultural machinery or equipment are exempt from the state gross retail tax if:

(1) the person acquiring the property acquires it for use in conjunction with the production of food **and food ingredients** or commodities for sale;

(2) the person acquiring the property is occupationally engaged in the production of food or commodities which he sells for human or animal consumption or uses for further food **and food ingredients** or commodity production; and

(3) the machinery or equipment is designed for use in gathering, moving, or spreading animal waste.

SECTION 23. IC 6-2.5-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 18. (a) Sales of **durable medical equipment, prosthetic devices**, artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical ~~equipment~~ supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

(b) Rentals of **durable medical equipment and other medical** supplies and devices are exempt from the state gross retail tax, if the rentals are prescribed by a person licensed to issue the prescription.

(c) Sales of hearing aids are exempt from the state gross retail tax if the hearing aids are fitted or dispensed by a person licensed or registered for that purpose. In addition, sales of hearing aid parts, attachments, or accessories are exempt from the state gross retail tax.

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For purposes of this subsection, a hearing aid is a device which is worn on the body and which is designed to aid, improve, or correct defective human hearing.

(d) Sales of colostomy bags, ileostomy bags, and the medical equipment, supplies, and devices used in conjunction with those bags are exempt from the state gross retail tax.

(e) Sales of equipment and devices used to administer insulin are exempt from the state gross retail tax.

SECTION 24. IC 6-2.5-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 19. (a) As used in this section, "legend drug" ~~has the meaning set forth in~~ **means a drug as defined in IC 6-2.5-1-17 that is also a legend drug for purposes of IC 16-18-2-199.**

(b) As used in this section, "nonlegend drug" means a drug (as defined in ~~IC 16-18-2-101(a)~~ **IC 6-2.5-1-17**) that is not a legend drug.

(c) Sales of legend drugs and sales of nonlegend drugs are exempt from the state gross retail tax if:

- (1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to prescribe, dispense, and administer those drugs to human beings or animals in the course of his professional practice; or
- (2) the licensed practitioner makes the sales.

(d) Sales of a nonlegend drug are exempt from the state gross retail tax, if:

- (1) the nonlegend drug is dispensed upon an original prescription or a drug order (as defined in IC 16-42-19-3); and
- (2) the ultimate user of the drug is a person confined to a hospital or health care facility.

(e) Sales of insulin, oxygen, blood, or blood plasma are exempt from the state gross retail tax, if the purchaser purchases the insulin, oxygen, blood, or plasma for medical purposes.

(f) Sales of drugs, insulin, oxygen, blood, and blood plasma are exempt from the state gross retail tax if:

- (1) the purchaser is a practitioner licensed to prescribe, dispense, and administer drugs to human beings or animals; and
- (2) the purchaser buys the items for:
  - (A) direct consumption in his practice; or
  - (B) resale to a patient that the practitioner is treating, in the case of sales of legend or nonlegend drugs.

SECTION 25. IC 6-2.5-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 20. (a) Sales of food **and food ingredients** for human consumption are exempt from

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the state gross retail tax.

(b) For purposes of this section, the term "food and food ingredients for human consumption" includes the following items if sold without eating utensils provided by the seller:

- (1) cereals and cereal products;
- (2) milk and milk products, including ice cream;
- (3) meat and meat products;
- (4) fish and fish products;
- (5) eggs and egg products;
- (6) vegetables and vegetable products;
- (7) fruit and fruit products, including fruit juices;
- (8) sugar, sugar substitutes, and sugar products;
- (9) coffee and coffee substitutes;
- (10) tea, cocoa, and cocoa products;
- (11) spices, condiments, extracts, and salt;
- (12) oleomargarine; and
- (13) natural spring water.

(1) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsector 3118 (bakeries).

(2) Food sold in an unheated state by weight or volume as a single item.

(3) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(c) Except as otherwise provided by subsection (b), for purposes of this section, the term "food and food ingredients for human consumption" does not include:

- (1) candy, confectionery, and chewing gum;
- (2) alcoholic beverages;
- (3) cocktail mixes;
- (4) (3) soft drinks; sodas; and other similar beverages;
- (5) medicines, tonics, vitamins, and other dietary supplements;
- (6) water (except natural spring water); mineral water; carbonated water; and ice;
- (7) pet food;
- (8) food furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant;
- (9) meals served by a retail merchant off the merchant's premises;
- (10) food sold by a retail merchant who ordinarily bags, wraps, or packages the food for immediate consumption on or near the merchant's premises, including food sold on a "take out" or "to



go" basis; and

(11) food sold through a vending machine or by a street vendor;

(4) food sold in a heated state or heated by the seller;

(5) two (2) or more food ingredients mixed or combined by the seller for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(6) food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

SECTION 26. IC 6-2.5-5-21, AS AMENDED BY P.L. 192-2002(ss), SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 21. (a) For purposes of this section, "private benefit or gain" does not include reasonable compensation paid to an employee for work or services actually performed.

(b) Sales of food **and food ingredients** are exempt from the state gross retail tax if:

(1) the seller meets the filing requirements under subsection (d) and is any of the following:

(A) A fraternity, a sorority, or a student cooperative housing organization that is connected with and under the supervision of a college, a university, or any other educational institution if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(B) Any:

(i) institution;

(ii) trust;

(iii) group;

(iv) united fund;

(v) affiliated agency of a united fund;

(vi) nonprofit corporation;

(vii) cemetery association; or

(viii) organization;

that is organized and operated exclusively for religious, charitable, scientific, literary, educational, or civic purposes if no part of its income is used for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

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(C) A group, an organization, or a nonprofit corporation that is organized and operated for fraternal or social purposes, or as a business league or association, and not for the private benefit or gain of any member, trustee, shareholder, employee, or associate.

(D) A:

- (i) hospital licensed by the state department of health;
- (ii) shared hospital services organization exempt from federal income taxation by Section 501(c)(3) or 501(e) of the Internal Revenue Code;
- (iii) labor union;
- (iv) church;
- (v) monastery;
- (vi) convent;
- (vii) school that is a part of the Indiana public school system;
- (viii) parochial school regularly maintained by a recognized religious denomination; or
- (ix) trust created for the purpose of paying pensions to members of a particular profession or business who created the trust for the purpose of paying pensions to each other; if the taxpayer is not organized or operated for private profit or gain;

(2) the purchaser is a person confined to his home because of age, sickness, or infirmity;

(3) the seller delivers the food **and food ingredients** to the purchaser; and

(4) the delivery is prescribed as medically necessary by a physician licensed to practice medicine in Indiana.

(c) Sales of food **and food ingredients** are exempt from the state gross retail tax if the seller is an organization described in subsection (b)(1), and the purchaser is a patient in a hospital operated by the seller.

(d) To obtain the exemption provided by this section, a taxpayer must file an application for exemption with the department:

- (1) before January 1, 2003, under IC 6-2.1-3-19 (repealed); or
- (2) not later than one hundred twenty (120) days after the taxpayer's formation.

In addition, the taxpayer must file an annual report with the department on or before the fifteenth day of the fifth month following the close of each taxable year. If a taxpayer fails to file the report, the department shall notify the taxpayer of the failure. If within sixty (60) days after



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receiving such notice the taxpayer does not provide the report, the taxpayer's exemption shall be canceled. However, the department may reinstate the taxpayer's exemption if the taxpayer shows by petition that the failure was due to excusable neglect.

SECTION 27. IC 6-2.5-5-21.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 21.5. Sales of food **and food ingredients** prescribed as medically necessary by a physician licensed to practice medicine in Indiana are exempt from the state gross retail tax if:

(1) a registered pharmacist makes the sale upon the prescription of a practitioner who is licensed to practice medicine in Indiana; or

(2) the licensed practitioner makes the sale of the food **and food ingredients** described in this section.

SECTION 28. IC 6-2.5-5-22, AS AMENDED BY P.L.192-2002(ss), SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 22. (a) Sales of school meals are exempt from the state gross retail tax if:

(1) the seller is a school containing students in any grade, one (1) through twelve (12);

(2) the purchaser is one (1) of those students or a school employee; and

(3) the school furnishes the food **and food ingredients** on its premises.

(b) Sales of food **and food ingredients** by not-for-profit colleges or universities are exempt from the state gross retail tax, if the purchaser is a student at the college or university.

(c) Sales of meals after December 31, 1976, by a fraternity, sorority, or student cooperative housing organization described in section 21(b)(1)(A) of this chapter are exempt from the state gross retail tax, if the purchaser:

(1) is a member of the fraternity, sorority, or student cooperative housing organization; and

(2) is enrolled in the college, university, or educational institution with which the fraternity, sorority, or student cooperative housing organization is connected and by which it is supervised.

SECTION 29. IC 6-2.5-5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 35. Transactions involving tangible personal property are exempt from the state gross retail tax if:

(1) the:

(A) person acquires the property to facilitate the service or

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consumption of food **and food ingredients** that is not exempted from the state gross retail tax under section 20 of this chapter; and

(B) property is:

(i) used, consumed, or removed in the service or consumption of the food **and food ingredients**; and

(ii) made unusable for further ~~food~~ service or consumption **of food and food ingredients** after the property's first use for ~~food~~ service or consumption **of food and food ingredients**; or

(2) the:

(A) person acquiring the property is engaged in the business of renting or furnishing rooms, lodgings, or accommodations in a commercial hotel, motel, inn, tourist camp, or tourist cabin; and

(B) the property acquired is:

(i) used up, removed, or otherwise consumed during the occupation of the rooms, lodgings, or accommodations by a guest; or

(ii) rendered nonreusable by the property's first use by a guest during the occupation of the rooms, lodgings, or accommodations.

SECTION 30. IC 6-8.1-16 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]:

**Chapter 16. Taxing Situs of Nonmobile Telecommunications Service**

**Sec. 1.** As used in this chapter, "air to ground radiotelephone service" means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

**Sec. 2.** As used in this chapter, "call by call basis" means any method of charging for telecommunications services by which the price is measured by individual calls.

**Sec. 3.** As used in this chapter, "communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

**Sec. 4.** As used in this chapter, "customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the

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1 contracting party, the end user of the telecommunications service  
 2 is the customer of the telecommunication service, but this sentence  
 3 only applies for the purpose of sourcing sales of  
 4 telecommunications services under this chapter. The term does not  
 5 include a reseller of telecommunications service or for mobile  
 6 telecommunications service of a serving carrier under an  
 7 agreement to serve the customer outside the home service  
 8 provider's licensed service area.

9 Sec. 5. As used in this chapter, "customer channel termination  
 10 point" means the location where the customer either inputs or  
 11 receives the communications.

12 Sec. 6. As used in this chapter, "end user" means the person  
 13 who uses the telecommunications service. In the case of an entity,  
 14 "end user" means the individual who uses the service on behalf of  
 15 the entity.

16 Sec. 7. As used in this chapter, "home service provider" means  
 17 the facilities based carrier or reseller with which the customer  
 18 contracts for the provision of mobile telecommunications service.

19 Sec. 8. As used in this chapter, "mobile telecommunications  
 20 service" means commercial mobile radio service, as defined in  
 21 47 CFR 20.3 as in effect on June 1, 1999.

22 Sec. 9. As used in this chapter, "place of primary use" means  
 23 the street address representative of where the customer's use of the  
 24 telecommunications service primarily occurs, which must be the  
 25 residential street address or the primary business street address of  
 26 the customer. In the case of mobile telecommunications services,  
 27 "place of primary use" must be within the licensed service area of  
 28 the home service provider.

29 Sec. 10. As used in this chapter, "post paid calling service"  
 30 means the telecommunications service obtained by making a  
 31 payment on a call by call basis either through the use of a credit  
 32 card or payment mechanism such as a bank card, travel card,  
 33 credit card, or debit card, or by charge made to a telephone  
 34 number that is not associated with the origination or termination  
 35 of the telecommunications service. A post paid calling service  
 36 includes a telecommunications service that would be a prepaid  
 37 calling service except it is not exclusively a telecommunications  
 38 service.

39 Sec. 11. As used in this chapter, "prepaid calling service" means  
 40 the right to access exclusively telecommunications services, which  
 41 must be paid for in advance and which enables the origination of  
 42 calls using an access number or authorization code, whether

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1 manually or electronically dialed, and that is sold in predetermined  
2 units or dollars of which the number declines with use in a known  
3 amount.

4 Sec. 12. As used in this chapter, "private communication  
5 service" means a telecommunications service that entitles the  
6 customer to exclusive or priority use of a communications channel  
7 or group of channels between or among termination points,  
8 regardless of the manner in which such channel or channels are  
9 connected, and includes switching capacity, extension lines,  
10 stations, and any other associated services that are provided in  
11 connection with the use of such channel or channels.

12 Sec. 13. As used in this chapter, "service address" means the  
13 following:

14 (1) The location of the telecommunications equipment to  
15 which a customer's call is charged and from which the call  
16 originates or terminates, regardless of where the call is billed  
17 or paid.

18 (2) If the location described in subdivision (1) is not known,  
19 the origination point of the signal of the telecommunications  
20 services first identified by either the seller's  
21 telecommunications system or in information received by the  
22 seller from its service provider, where the system used to  
23 transport such signals is not that of the seller.

24 (3) If neither of the locations described in subdivision (1) or  
25 (2) is known, the location of the customer's place of primary  
26 use.

27 Sec. 14. Except for the telecommunications services listed in  
28 section 16 of this chapter, the sale of telecommunications service  
29 sold on a call by call basis shall be sourced to:

30 (1) each level of taxing jurisdiction where the call originates  
31 and terminates in that jurisdiction; or

32 (2) each level of taxing jurisdiction where the call either  
33 originates or terminates and in which the service address is  
34 also located.

35 Sec. 15. Except for the telecommunications services listed in  
36 section 16 of this chapter, a sale of telecommunications services  
37 sold on a basis other than a call by call basis is sourced to the  
38 customer's place of primary use.

39 Sec. 16. The sale of the following telecommunications services  
40 shall be sourced to each level of taxing jurisdiction as follows:

41 (1) A sale of mobile telecommunications services, other than  
42 air to ground radiotelephone service and prepaid calling

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1 service, is sourced to the customer's place of primary use as  
 2 required by the Mobile Telecommunications Sourcing Act and  
 3 IC 6-8.1-15.

4 (2) A sale of post paid calling service is sourced to the  
 5 origination point of the telecommunications signal as first  
 6 identified by either:

7 (A) the seller's telecommunications system; or

8 (B) information received by the seller from its service  
 9 provider, where the system used to transport such signals  
 10 is not that of the seller.

11 (3) A sale of prepaid calling service is sourced in the following  
 12 manner:

13 (A) When the service is received by the purchaser at a  
 14 business location of the seller, the sale is sourced to that  
 15 business location.

16 (B) When the service is not received by the purchaser at a  
 17 business location of the seller, the sale is sourced to the  
 18 location where receipt by the purchaser (or the  
 19 purchaser's donee, designated as such by the purchaser)  
 20 occurs, including the location indicated by instructions for  
 21 delivery to the purchaser (or donee), known to the seller.

22 (C) When clauses (A) and (B) do not apply, the sale is  
 23 sourced to the location indicated by an address for the  
 24 purchaser that is available from the business records of the  
 25 seller that are maintained in the ordinary course of the  
 26 seller's business when use of this address does not  
 27 constitute bad faith.

28 (D) When clauses (A) through (C) do not apply, the sale is  
 29 sourced to the location indicated by an address for the  
 30 purchaser obtained during the consummation of the sale,  
 31 including the address of a purchaser's payment  
 32 instrument, if no other address is available, when use of  
 33 this address does not constitute bad faith.

34 (E) When clauses (A) through (D) do not apply, including  
 35 the circumstance in which the seller is without sufficient  
 36 information to apply the previous clauses, the location will  
 37 be determined by either:

38 (i) the address from which tangible personal property  
 39 was shipped, from which any digital good or computer  
 40 software delivered electronically was first available for  
 41 transmission by the seller, or from which the service was  
 42 provided (disregarding for these purposes any location

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that merely provided the digital transfer of the product sold); or

(ii) in the case of a sale of mobile telecommunications service that is a prepaid telecommunications service, the location associated with the mobile telephone number.

(4) A sale of a private communications service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one (1) jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two (2) customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced fifty percent (50%) in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one (1) jurisdiction or level of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

SECTION 31. IC 6-9-12-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 3. (a) Subject to section 4 of this chapter, the tax imposed under this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

(2) in a county in which a consolidated first class city is located; and

(3) by a retail merchant for a consideration.

(b) Transactions described in subsection (a)(1) include, but are not limited to transactions in which food or beverage is:

(1) served by a retail merchant off his premises;

(2) sold by a retail merchant who ordinarily bags, wraps, or

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packages the food or beverage for immediate consumption on or near the retail merchant's premises; including food or beverage sold on a "take out" or "to go" basis; or

(3) sold by a street vendor.

**(2) food sold in a heated state or heated by a retail merchant;**

**(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or**

**(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).**

SECTION 32. IC 6-9-20-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

(2) in the county in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include, but are not limited to, transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

~~(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises; including food or beverage sold on a "take out" or "to go" basis; or~~

~~(3) sold by a street vendor.~~

**(2) food sold in a heated state or heated by a retail merchant;**

**(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3,**



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subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 33. IC 6-9-21-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

(2) in the county in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or

(3) sold by a street vendor.

(2) food sold in a heated state or heated by a retail merchant;

(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

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(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 34. IC 6-9-23-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- ~~(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or~~
- ~~(3) sold by a street vendor.~~
- (2) food sold in a heated state or heated by a retail merchant;**
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or**
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).**

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 35. IC 6-9-24-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this

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chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the municipality in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- ~~(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or~~
- ~~(3) sold by a street vendor.~~

**(2) food sold in a heated state or heated by a retail merchant;**  
**(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or**

**(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).**

(c) The municipal food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 36. IC 6-9-25-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

- (1) for consumption at a location, or on equipment, provided by a retail merchant;
- (2) in the county in which the tax is imposed; and
- (3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions



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in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or
- (4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 37. IC 6-9-26-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 7. Transactions described in section 6(1) of this chapter include transactions in which food or beverage is:

- (1) served by a retail merchant off the merchant's premises;
- (2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or
- (3) sold by a street vendor.
- (2) food sold in a heated state or heated by a retail merchant;
- (3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3,



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subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

SECTION 38. IC 6-9-27-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to a transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location or on equipment provided by a retail merchant;

(2) in the town in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

~~(2) sold by a retail merchant that ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or~~

~~(3) sold by a street vendor.~~

(2) food sold in a heated state or heated by a retail merchant;

(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The town food and beverage tax does not apply to the furnishing, preparing, or serving of a food or beverage in a transaction that is exempt, or to the extent the transaction is exempt, from the state gross retail tax imposed by IC 6-2.5.



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SECTION 39. IC 6-9-33-4, AS ADDED BY P.L.8-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2004]: Sec. 4. (a) Except as provided in subsection (c), a tax imposed under section 3 of this chapter applies to any transaction in which food or beverage is furnished, prepared, or served:

(1) for consumption at a location, or on equipment, provided by a retail merchant;

(2) in the county in which the tax is imposed; and

(3) by a retail merchant for consideration.

(b) Transactions described in subsection (a)(1) include transactions in which food or beverage is:

(1) served by a retail merchant off the merchant's premises;

(2) sold by a retail merchant who ordinarily bags, wraps, or packages the food or beverage for immediate consumption on or near the retail merchant's premises, including food or beverage sold on a "take out" or "to go" basis; or

(3) sold by a street vendor.

(2) food sold in a heated state or heated by a retail merchant;

(3) two (2) or more food ingredients mixed or combined by a retail merchant for sale as a single item (other than food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal Food and Drug Administration in chapter 3, subpart 3-401.11 of its Food Code so as to prevent food borne illnesses); or

(4) food sold with eating utensils provided by a retail merchant, including plates, knives, forks, spoons, glasses, cups, napkins, or straws (for purposes of this subdivision, a plate does not include a container or packaging used to transport the food).

(c) The county supplemental food and beverage tax does not apply to the furnishing, preparing, or serving of any food or beverage in a transaction that is exempt, or to the extent exempt, from the state gross retail tax imposed by IC 6-2.5.

SECTION 40. [EFFECTIVE UPON PASSAGE] (a) The department of state revenue shall adopt the initial rules and prescribe the initial forms to implement this act before December 1, 2004. The department of state revenue may adopt the initial rules required under this SECTION in the same manner that emergency rules are adopted under IC 4-22-2-37.1. A rule adopted under this SECTION expires on the earlier of the following:



- 1           **(1) The date that the rule is superseded, amended, or repealed**
- 2           **by a permanent rule adopted under IC 4-22-2 or another rule**
- 3           **adopted under this SECTION.**
- 4           **(2) July 1, 2005.**
- 5           **(b) This SECTION expires July 1, 2005.**
- 6           **SECTION 41. An emergency is declared for this act.**

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